

**IC 14-28**

**ARTICLE 28. FLOOD CONTROL**

**IC 14-28-1**

**Chapter 1. Flood Control**

**IC 14-28-1-1**

**Legislative intent**

Sec. 1. The following are declared:

- (1) The loss of lives and property caused by floods and the damage resulting from floods is a matter of deep concern to Indiana affecting the life, health, and convenience of the people and the protection of property. To prevent and limit floods, all flood control works and structures and the alteration of natural or present watercourses of all rivers and streams in Indiana should be regulated, supervised, and coordinated in design, construction, and operation according to sound and accepted engineering practices so as to best control and minimize the extent of floods and reduce the height and violence of floods.
- (2) The channels and that part of the flood plains of rivers and streams that are the floodways should not be inhabited and should be kept free and clear of interference or obstructions that will cause any undue restriction of the capacity of the floodways.
- (3) The water resources of Indiana that have been diminishing should be accumulated, preserved, and protected to prevent any loss or waste beyond reasonable and necessary use.
- (4) A master plan or comprehensive plan for the entire state to control floods and to accumulate, preserve, and protect the water resources should be investigated, studied, and prepared, policy and practices should be established, and the necessary works should be constructed and placed in operation.

*As added by P.L.1-1995, SEC.21.*

**IC 14-28-1-1.2**

**"Boundary river" defined**

Sec. 1.2. "Boundary river", for purposes of this chapter, means the part of the Ohio River that forms the boundary between Kentucky and Indiana.

*As added by P.L.135-1997, SEC.11.*

**IC 14-28-1-1.3**

**"Boundary river floodway" defined**

Sec. 1.3. "Boundary river floodway", for purposes of this chapter, means the floodway (as defined by IC 14-8-2-102) of a boundary river.

*As added by P.L.135-1997, SEC.12.*

**IC 14-28-1-2**

**"Flood control" defined**

Sec. 2. As used in this chapter, "flood control" means the following:

- (1) The prevention of floods.
- (2) The control, regulation, diversion, or confinement of flood water or flood flow.
- (3) The protection from flood water, according to sound and accepted engineering practice and including all things incidental to or connected with the protection, to minimize the following:
  - (A) The extent of floods.
  - (B) The death, damage, and destruction caused by floods.

*As added by P.L.1-1995, SEC.21.*

#### **IC 14-28-1-3**

##### **"Flood easement" defined**

Sec. 3. As used in this chapter, "flood easement" means an easement on property to be inundated or covered by water.

*As added by P.L.1-1995, SEC.21.*

#### **IC 14-28-1-4**

##### **"Water resources" defined**

Sec. 4. As used in this chapter, "water resources" means surface and subsurface water.

*As added by P.L.1-1995, SEC.21.*

#### **IC 14-28-1-5**

##### **Adoption of rules**

Sec. 5. The commission shall adopt rules under IC 4-22-2 for the following:

- (1) The transaction of commission business.
- (2) The administration and exercise of the commission's powers and duties.

*As added by P.L.1-1995, SEC.21.*

#### **IC 14-28-1-6**

##### **Furnishing of information**

Sec. 6. Each county agent, city engineer, county engineer, county surveyor, and state agency shall obtain, provide, and furnish pertinent data and information that is requested by an order of the commission, subject to the approval of the governor.

*As added by P.L.1-1995, SEC.21.*

#### **IC 14-28-1-7**

##### **Use of state agencies; personnel; purchases**

Sec. 7. The commission may do the following:

- (1) Use any state agency in connection with:
  - (A) the commission's investigation, studies, and preparation of plans; or
  - (B) the performance of other duties.
- (2) Employ the technical experts, engineers, and clerical and other assistants that are necessary.

- (3) Through the state purchasing agent purchase the supplies, equipment, instruments, and machinery that the commission considers necessary to perform the commission's duties.

*As added by P.L.1-1995, SEC.21.*

#### **IC 14-28-1-8**

##### **Right of entry upon premises**

Sec. 8. The commission and the commission's agents, engineers, surveyors, and other employees may enter upon any land or water in Indiana for the purpose of making an investigation, an examination, or a survey provided by this chapter.

*As added by P.L.1-1995, SEC.21.*

#### **IC 14-28-1-9**

##### **Hearings**

Sec. 9. The commission may conduct hearings at which at least one (1) of the commission members shall preside. Each commissioner may administer oaths. The commission may obtain information for the commission's purposes from any person, including issuing subpoenas to require the attendance of witnesses and examining witnesses under oath.

*As added by P.L.1-1995, SEC.21.*

#### **IC 14-28-1-10**

##### **Title to property**

Sec. 10. The title to all land, easements, flood easements, or other interest in land or other property or rights acquired by the commission must be:

- (1) approved by the attorney general; and
- (2) taken in the name of the state of Indiana.

*As added by P.L.1-1995, SEC.21.*

#### **IC 14-28-1-11**

##### **Eminent domain powers**

Sec. 11. (a) The commission may exercise the power of eminent domain. If the commission is unable to agree with the owner for the purchase of:

- (1) land;
- (2) an easement;
- (3) a flood easement;
- (4) other interest in land; or
- (5) other property or right that in the commission's opinion is necessary for the commission's purposes;

the commission may acquire the property or right by condemnation under IC 32-24.

(b) The commission must adopt an appropriate resolution and deliver the resolution to the attorney general.

(c) The attorney general shall commence and prosecute an action in the name of the state of Indiana on the relation of the commission for the appropriation of the property or right. The title to the property

or right acquired vests in the state.

*As added by P.L.1-1995, SEC.21. Amended by P.L.2-2002, SEC.61.*

#### **IC 14-28-1-12**

##### **Jurisdiction; comprehensive studies and plans**

Sec. 12. The commission has jurisdiction over the public and private waters in Indiana and the adjacent land necessary for flood control purposes or for the prevention of flood damage. The commission shall do the following:

- (1) Make a comprehensive study and investigation of all pertinent conditions of the areas in Indiana affected by floods.
- (2) Determine the best method and manner of establishing flood control, giving consideration to the following:
  - (A) The reservoir method.
  - (B) The channel improvement method.
  - (C) The levee method.
  - (D) The flood plain regulation method.
  - (E) Any other practical method.
- (3) Adopt and establish a comprehensive plan or master plan for flood control for all areas of Indiana subject to floods.
- (4) Determine the best and most practical method and manner of establishing and constructing the necessary flood control works.
- (5) Adopt appropriate measures for the prevention of flood damage.

*As added by P.L.1-1995, SEC.21.*

#### **IC 14-28-1-13**

##### **Construction or obtaining of flood control works**

Sec. 13. (a) The commission may construct flood control works or a part of flood control works. The commission may perform the duties in cooperation with any of the following:

- (1) A person.
  - (2) A state agency.
  - (3) Other states or an agency of another state.
  - (4) The United States or any agency of the United States.
- (b) The commission shall obtain flood control works as follows:
- (1) From and through or by cooperation with the United States Army Corps of Engineers or an agency of the United States.
  - (2) By cooperation with and action of cities and towns under Indiana law relating to flood control.
  - (3) By cooperation with and action of landowners in rural areas affected by flood control works under Indiana law relating to levees.

*As added by P.L.1-1995, SEC.21.*

#### **IC 14-28-1-14**

##### **Surveys, investigations, plans, and recommendations regarding water resources**

Sec. 14. The commission shall do the following:

(1) Make surveys and investigations of the water resources of Indiana, giving consideration to the need for and appropriate sources of suitable water supplies for domestic, agricultural, municipal, industrial, power, transportation, recreation, stream pollution, health, and other beneficial purposes.

(2) Make and formulate plans and recommendations for the further development, protection, and preservation of the water resources of Indiana for such purposes.

*As added by P.L.1-1995, SEC.21.*

#### **IC 14-28-1-15**

##### **Recommendations and information from department**

Sec. 15. (a) The commission shall, in the course of the commission's investigations and surveys of multiple purpose flood control reservoirs, obtain recommendations from the department relative to the comprehensive planning of:

- (1) recreational facilities;
- (2) hunting and fishing opportunities; and
- (3) forest improvements;

in connection with the reservoirs.

(b) The recommendations from the department must be accompanied by supporting data and information, as far as is feasible, including the following:

- (1) Plans and policies for the acquisition, development, maintenance, operation, and use of land.
- (2) Estimates of costs and benefits.
- (3) Proposed sources of money.

(c) The information shall:

- (1) be made available to the public; and
- (2) be included as an integral part of the reports pertaining to multiple purpose flood control reservoirs that are prepared by the commission.

*As added by P.L.1-1995, SEC.21.*

#### **IC 14-28-1-16**

##### **Promotion of local efforts; cooperation with individuals and agencies**

Sec. 16. The commission shall do the following:

- (1) Encourage and promote local initiative and effort in providing flood control and in the development of water resources, subject to the regulation and control provided by law.
- (2) Cooperate with, advise, disseminate information to, and assist any person or state agency in matters relating to flood control and the development of water resources, including flood plain regulations or controls.

*As added by P.L.1-1995, SEC.21.*

#### **IC 14-28-1-17**

##### **Cooperation with federal government**

Sec. 17. The commission may do the following:

(1) Represent and act for and in behalf of the state, subject to the approval of the governor, in all matters of flood control and the water resources of Indiana with the United States and any other state.

(2) Cooperate with, obtain, approve, and accept flood control works from and through the United States Army Corps of Engineers.

(3) Cooperate with and obtain, approve, and accept works or a grant of any character or description from and through an agency of the United States relating to flood control and water resources and administer the expenditures of money in connection with the grant.

*As added by P.L.1-1995, SEC.21.*

#### **IC 14-28-1-18**

##### **Easements and rights-of-way**

Sec. 18. (a) This section applies to real property:

(1) for which the state has the custody, management, possession, or control; and

(2) in which the state has a right, a title, or an interest.

(b) The state may, with the written approval of the governor, give, grant, and convey to any person:

(1) easements;

(2) rights-of-way; and

(3) the right and privilege;

to construct, erect, maintain, operate, and use any works or structures in connection with flood control or water resources on and in the real property.

*As added by P.L.1-1995, SEC.21.*

#### **IC 14-28-1-19**

##### **Applicability of laws regarding structures in floodways**

Sec. 19. Sections 20, 21, 22, 23, 24, and 25 of this chapter do not apply to any of the following:

(1) An abode or a residence constructed on land that meets the following conditions:

(A) Is between the 791.0 mile marker and the 791.5 mile marker on the Ohio River.

(B) Is adjacent to a recreational area.

(C) Has been or may be filled to or above an elevation of three hundred seventy-eight (378) feet above sea level.

(D) Is properly protected by riprap in a manner that minimizes the possibility of erosion by river currents.

(2) An abode or a residence if the following conditions are met:

(A) The abode or residence is rebuilt upon the area of the original foundation and is substantially the same configuration as the former abode or residence.

(B) The abode or residence was unintentionally destroyed by a means other than floodwater.

(C) The rebuilding of the abode or residence is begun within

one (1) year and completed within two (2) years after the destruction of the former abode or residence.

(D) The abode or residence is located in the floodway of a stream having a watershed upstream from the abode or residence of less than fifteen (15) square miles in area.

(E) The lowest floor of the rebuilt abode or residence, including the basement, is at or above the one hundred (100) year frequency flood elevation if the abode or residence was totally destroyed.

(F) A variance is obtained from the county or municipality for the lowest floor of the abode or residence to be below the one hundred (100) year frequency flood elevation if the damage to the former abode or residence is less than one hundred percent (100%).

(G) An ordinance allowing the rebuilding of an abode or a residence is adopted by any of the following:

(i) The legislative body of the city or town in which the abode or residence is located.

(ii) The legislative body of the county in which the abode or residence is located if the abode or residence is not located in a city or town.

(3) A property that is to be rehabilitated and reused as an abode or residence if the following conditions are met:

(A) The property is located between the South Newton Bridge (Veterans Memorial Bridge) located at 85.30 miles from the mouth of the Patoka River and the bridge that is part of State Road 164 located at 85.90 miles from the mouth of the Patoka River.

(B) The property is a former industrial site.

(C) The property is adjacent to a navigable waterway.

(D) The property is located adjacent to a riverwalk.

(E) The property is a property in need of revitalization.

(F) The property is vacant or in danger of becoming vacant.

(G) The lowest floor that is used as an abode or residence is at least two (2) feet above the one hundred (100) year frequency flood elevation.

*As added by P.L.1-1995, SEC.21. Amended by P.L.108-2013, SEC.4.*

## **IC 14-28-1-20**

### **Erection of structures in floodways prohibited**

Sec. 20. A person may not do any of the following:

(1) Erect in or on any floodway a permanent structure for use as an abode or a place of residence, except as authorized under sections 24, 25, and 26.5 of this chapter.

(2) Except as authorized under section 26.5 of this chapter, erect, make, use, or maintain in or on any floodway, or suffer or permit the erection, making, use, or maintenance in or on any floodway, a structure, an obstruction, a deposit, or an excavation that will do any of the following:

(A) Adversely affect the efficiency of or unduly restrict the

capacity of the floodway.

(B) By virtue of the nature, design, method of construction, state of maintenance, or physical condition do any of the following:

(i) Constitute an unreasonable hazard to the safety of life or property.

(ii) Result in unreasonably detrimental effects upon the fish, wildlife, or botanical resources.

(3) Reconstruct or allow or permit the reconstruction of an abode or a residence located in a floodway, except as authorized under sections 24, 25, and 26.5 of this chapter.

*As added by P.L.1-1995, SEC.21. Amended by P.L.135-1997, SEC.13.*

#### **IC 14-28-1-21**

##### **Nuisance abatement**

Sec. 21. A structure, an obstruction, a deposit, or an excavation described in section 20(2) of this chapter is a public nuisance. The director may commence, maintain, and prosecute an appropriate action to enjoin or abate a nuisance, including the following:

(1) Any of the nuisances described in section 20(2) of this chapter.

(2) Any other nuisance that:

(A) adversely affects flood control or the safety of life or property; or

(B) is unreasonably detrimental to fish, wildlife, or botanical resources.

*As added by P.L.1-1995, SEC.21.*

#### **IC 14-28-1-22**

##### **Construction permits**

Sec. 22. (a) As used in subsection (b)(1) with respect to a stream, "total length" means the length of the stream, expressed in miles, from the confluence of the stream with the receiving stream to the upstream or headward extremity of the stream, as indicated by the solid or dashed, blue or purple line depicting the stream on the most current edition of the seven and one-half (7 1/2) minute topographic quadrangle map published by the United States Geological Survey, measured along the meanders of the stream as depicted on the map.

(b) This section does not apply to the following:

(1) A reconstruction or maintenance project (as defined in IC 36-9-27) on a stream or an open regulated drain if the total length of the stream or open drain is not more than ten (10) miles.

(2) A construction or reconstruction project on a state or county highway bridge in a rural area that crosses a stream having an upstream drainage area of not more than fifty (50) square miles and the relocation of utility lines associated with the construction or reconstruction project if confined to an area not more than one hundred (100) feet from the limits of the highway



construction right-of-way.

(3) The performance of an activity described in subsection (c)(1) or (c)(2) by a surface coal mining operation that is operated under a permit issued under IC 14-34.

(4) Any other activity that is determined by the commission, according to rules adopted under IC 4-22-2, to pose not more than a minimal threat to floodway areas.

(5) An activity in a boundary river floodway to which section 26.5 of this chapter applies.

(6) The removal of a logjam or mass of wood debris that has accumulated in a river or stream, subject to the following conditions:

(A) Work must not be within a salmonid stream designated under 327 IAC 2-1.5-5 without the prior written approval of the department's division of fish and wildlife.

(B) Work must not be within a natural, scenic, or recreational river or stream designated under 312 IAC 7-2.

(C) Except as otherwise provided in Indiana law, free logs or affixed logs that are crossways in the channel must be cut, relocated, and removed from the floodplain. Logs may be maintained in the floodplain if properly anchored or otherwise secured so as to resist flotation or dislodging by the flow of water and placement in an area that is not a wetland. Logs must be removed and secured with a minimum of damage to vegetation.

(D) Isolated or single logs that are embedded, lodged, or rooted in the channel, and that do not span the channel or cause flow problems, must not be removed unless the logs are either of the following:

(i) Associated with or in close proximity to larger obstructions.

(ii) Posing a hazard to navigation.

(E) A leaning or severely damaged tree that is in immediate danger of falling into the waterway may be cut and removed if the tree is associated with or in close proximity to an obstruction. The root system and stump of the tree must be left in place.

(F) To the extent practicable, the construction of access roads must be minimized, and should not result in the elevation of the floodplain.

(G) To the extent practicable, work should be performed exclusively from one (1) side of a waterway. Crossing the bed of a waterway is prohibited.

(H) To prevent the flow of sediment laden water back into the waterway, appropriate sediment control measures must be installed.

(I) Within fifteen (15) days, all bare and disturbed areas must be revegetated with a mixture of grasses and legumes. Tall fescue must not be used under this subdivision, except that low endophyte tall fescue may be used in the bottom of the

waterway and on side slopes.

(c) A person who desires to:

- (1) erect, make, use, or maintain a structure, an obstruction, a deposit, or an excavation; or
- (2) suffer or permit a structure, an obstruction, a deposit, or an excavation to be erected, made, used, or maintained;

in or on a floodway must file with the director a verified written application for a permit accompanied by a nonrefundable fee of two hundred dollars (\$200).

(d) The application for a permit must set forth the material facts together with plans and specifications for the structure, obstruction, deposit, or excavation.

(e) An applicant must receive a permit from the director for the work before beginning construction. The director shall issue a permit only if in the opinion of the director the applicant has clearly proven that the structure, obstruction, deposit, or excavation will not do any of the following:

- (1) Adversely affect the efficiency of or unduly restrict the capacity of the floodway.
- (2) Constitute an unreasonable hazard to the safety of life or property.
- (3) Result in unreasonably detrimental effects upon fish, wildlife, or botanical resources.

(f) In deciding whether to issue a permit under this section, the director shall consider the cumulative effects of the structure, obstruction, deposit, or excavation. The director may incorporate in and make a part of an order of authorization conditions and restrictions that the director considers necessary for the purposes of this chapter.

(g) A permit issued under this section:

- (1) is valid for two (2) years after the issuance of the permit; and
- (2) to:
  - (A) the Indiana department of transportation or a county highway department if there is any federal funding for the project; or
  - (B) an electric utility for the construction of a power generating facility;

is valid for five (5) years from the date of issuance.

A permit that is active and was issued under subdivision (1) before July 1, 2014, is valid for two (2) years beginning July 2014, and a permit that is active and was issued under subdivision (2) before July 1, 2014, is valid for five (5) years beginning July 2014.

(h) A permit issued under this section may be renewed one (1) time for a period not to exceed two (2) additional years.

(i) The director shall send a copy of each permit issued under this section to each river basin commission organized under:

- (1) IC 14-29-7 or IC 13-2-27 (before its repeal); or
- (2) IC 14-30-1 or IC 36-7-6 (before its repeal);

that is affected.

(j) The permit holder shall post and maintain a permit issued under

this section at the authorized site.

(k) For the purposes of this chapter, the lowest floor of a building, including a residence or abode, that is to be constructed or reconstructed in the one hundred (100) year floodplain of an area protected by a levee that is:

- (1) inspected; and
- (2) found to be in good or excellent condition;

by the United States Army Corps of Engineers shall not be lower than the one hundred (100) year frequency flood elevation plus one (1) foot.

*As added by P.L.1-1995, SEC.21. Amended by P.L.180-1995, SEC.4; P.L.2-1997, SEC.53; P.L.135-1997, SEC.14; P.L.2-1998, SEC.59; P.L.154-2002, SEC.1; P.L.186-2003, SEC.75; P.L.76-2010, SEC.1; P.L.219-2014, SEC.33.*

### **IC 14-28-1-23**

#### **Removal of structures or obstructions**

Sec. 23. (a) The director may remove or eliminate a structure, an obstruction, a deposit, or an excavation in a floodway that:

- (1) adversely affects the efficiency of or unduly restricts the capacity of the floodway;
- (2) constitutes an unreasonable hazard to the safety of life or property; or
- (3) is unreasonably detrimental to fish, wildlife, or botanical resources;

by an action in condemnation.

(b) In assessing the damages in the proceedings, the appraisers and the court shall take into consideration whether the structure, obstruction, deposit, or excavation is legally in or on the floodway.

*As added by P.L.1-1995, SEC.21.*

### **IC 14-28-1-24**

#### **Reconstruction permits; violations**

Sec. 24. (a) This section does not apply to the reconstruction of a residence located in a boundary river floodway.

(b) A person may not begin the reconstruction of an abode or a residence that is located in a floodway and is substantially damaged (as defined in 44 CFR 59.1, as in effect on January 1, 1993) unless the person has:

- (1) obtained a permit under this section or section 26.5 of this chapter; or
- (2) demonstrated to the department through the submission of material facts, plans, and specifications that the material used to elevate the reconstructed abode or residence:
  - (A) does not extend beyond the original foundation of the abode or residence; and
  - (B) meets the criteria set forth in subsection (d)(2) through (d)(7).

(c) A person who desires to reconstruct an abode or a residence that does not meet the requirements under subsection (b)(2) must file

with the director a verified written application for a permit accompanied by a nonrefundable fee of fifty dollars (\$50). An application submitted under this section must do the following:

- (1) Set forth the material facts concerning the proposed reconstruction.

- (2) Include the plans and specifications for the reconstruction.

- (d) The director may issue a permit to an applicant under this section only if the applicant has clearly proven all of the following:

- (1) The abode or residence will be reconstructed:

- (A) in the area of the original foundation and in substantially the same configuration as the former abode or residence; or

- (B) in a location that is, as determined by the director, safer than the location of the original foundation.

- (2) The lowest floor elevation of the abode or residence as reconstructed, including the basement, will be at least two (2) feet above the one hundred (100) year flood elevation.

- (3) The abode or residence will be designed or modified and adequately anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.

- (4) The abode or residence will be reconstructed with materials resistant to flood damage.

- (5) The abode or residence will be reconstructed by methods and practices that minimize flood damages.

- (6) The abode or residence will be reconstructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed and located to prevent water from entering or accumulating within the components during conditions of flooding.

- (7) The abode or residence, as reconstructed, will comply with the minimum requirements for floodplain management set forth in 44 CFR Part 60, as in effect on January 1, 1993.

- (e) When granting a permit under this section, the director may establish and incorporate into the permit certain conditions and restrictions that the director considers necessary for the purposes of this chapter.

- (f) A permit issued by the director under this section is void if the reconstruction authorized by the permit is not commenced within two (2) years after the permit is issued.

- (g) The director shall send a copy of each permit issued under this section to each river basin commission organized under:

- (1) IC 14-29-7 or IC 13-2-27 (before its repeal); or

- (2) IC 14-30-1 or IC 36-7-6 (before its repeal);

that is affected by the permit.

- (h) The person to whom a permit is issued under this section shall post and maintain the permit at the site of the reconstruction authorized by the permit.

- (i) A person who knowingly:

- (1) begins the reconstruction of an abode or a residence in violation of subsection (b);

(2) violates a condition or restriction of a permit issued under this section; or

(3) fails to post and maintain a permit at a reconstruction site in violation of subsection (h);

commits a Class B infraction. Each day that the person is in violation of subsection (b), the permit, or subsection (h) constitutes a separate infraction.

*As added by P.L.1-1995, SEC.21. Amended by P.L.135-1997, SEC.15; P.L.71-2004, SEC.17; P.L.53-2008, SEC.1.*

#### **IC 14-28-1-25**

##### **Reconstruction permit exception; violation**

Sec. 25. (a) A person who desires to reconstruct an abode or a residence that:

(1) is located in a floodway; and

(2) is not substantially damaged (as defined in 44 CFR 59.1, as in effect on January 1, 1997);

is not required to obtain a permit from the department for the reconstruction of the abode or residence if the reconstruction will meet the requirements set forth in 44 CFR Part 60, as in effect on January 1, 1997.

(b) A person who knowingly reconstructs an abode or a residence described in subsection (a) in a way that does not comply with the requirements referred to in subsection (a) commits a Class B infraction.

*As added by P.L.1-1995, SEC.21. Amended by P.L.135-1997, SEC.16; P.L.71-2004, SEC.18; P.L.53-2008, SEC.2.*

#### **IC 14-28-1-26**

##### **Additions to structures in floodways**

Sec. 26. (a) This section does not apply to the construction of an addition to a residence located in a boundary river floodway.

(b) Subject to:

(1) subsection (c); and

(2) the restrictions imposed by the unit (as defined in IC 36-1-2-23) in which the abode or residence is located;

a person may construct at least one (1) addition to an abode or a residence that is located in a floodway.

(c) A person may not construct an addition to an abode or a residence located in a floodway if the addition, in combination with all other additions to the abode or residence that have been constructed since the abode or residence was originally built, would increase the market value of the abode or residence to an amount more than fifty percent (50%) greater than:

(1) the market value of the abode or residence if no additions have been constructed since the abode or residence was originally built; or

(2) the approximate market value the abode or residence would have in the form in which the abode or residence was originally built if at least one (1) addition has already been constructed.

(d) For the purposes of subsection (c), the market value of an abode or a residence does not include the value of the land on which the abode or residence is built.

*As added by P.L.1-1995, SEC.21. Amended by P.L.135-1997, SEC.17.*

#### **IC 14-28-1-26.5**

##### **Mobile home or residence in boundary river floodway; permits**

Sec. 26.5. (a) This section applies to the following activities:

- (1) The placement or replacement of a mobile home within a boundary river floodway.
- (2) The repair of a residence that:
  - (A) is located in a boundary river floodway; and
  - (B) has been damaged by floodwaters or another means; except for the reconstruction of a residence to which section 25 of this chapter applies.
- (3) The construction of an:
  - (A) addition to; or
  - (B) improvement of;a residential structure within a boundary river floodway.
- (4) The construction of a new residence within a boundary river floodway.

(b) The federal regulations that:

- (1) were adopted by the director of the Federal Emergency Management Agency to implement the National Flood Insurance Act (42 U.S.C. 4001 et seq.);
- (2) are published in 44 CFR Parts 59 through 60; and
- (3) are in effect on January 1, 1997;

are adopted as the criteria for determining whether an activity referred to in subsection (a) is allowed in Indiana. However, the lowest floor of a new residence constructed within a boundary river floodway referred to in subsection (a)(4) must be at least two (2) feet above the one hundred (100) year frequency flood elevation.

(c) A person who wishes to perform an activity referred to in subsection (a) is authorized to perform the activity if:

- (1) the federal regulations described in subsection (b) as the governing criteria allow the activity; and
- (2) the person obtains a permit for the activity under this section.

(d) To obtain a permit for an activity referred to in subsection (a), a person must:

- (1) file with the director a verified written application for a permit on a form provided by the department; and
- (2) pay to the department a nonrefundable fee of ten dollars (\$10).

(e) An application filed under this section must:

- (1) set forth the material facts concerning the proposed activity; and
- (2) in the case of an activity described in subsection (a)(1), (a)(3), or (a)(4), include plans and specifications for the

construction, reconstruction, or repair.

(f) If an application submitted under this section meets the requirements set forth in subsections (d) and (e), the director may not reject the application unless the regulations adopted as the governing criteria under subsection (b) do not allow the activity.

(g) If the federal regulations adopted as the governing criteria under subsection (b) authorize a type of activity only when certain conditions are met, a permit that the director issues for that type of activity may require the applicant, in carrying out the activity, to meet the same conditions.

(h) If:

(1) there is a dispute under this section about the elevation of a site; and

(2) the elevation of the site has been determined by a professional surveyor;

the elevation determined by the professional surveyor must be used as the accepted elevation.

*As added by P.L.135-1997, SEC.18. Amended by P.L.121-2003, SEC.1; P.L.57-2013, SEC.18.*

#### **IC 14-28-1-27**

##### **Contaminants in lakes or floodways prohibited**

Sec. 27. (a) Except as provided in subsection (b), this section does not apply to the following:

(1) A person using chemicals in a normal manner in the production of agricultural products.

(2) A person acting in accordance with an appropriate permit issued by the director.

(3) A person acting in accordance with a permit issued by the department of environmental management under water pollution control laws (as defined in IC 13-11-2-261) or environmental management laws (as defined in IC 13-11-2-71).

(b) This section applies to the permitting requirements set forth in the following:

(1) Section 22 of this chapter.

(2) IC 14-26-2.

(c) A person may not put, throw, dump, or leave a contaminant, garbage, or solid waste:

(1) in, upon, or within fifteen (15) feet of a lake; or

(2) in or upon a floodway.

*As added by P.L.1-1995, SEC.21. Amended by P.L.1-1996, SEC.66.*

#### **IC 14-28-1-28**

##### **Commission floodways**

Sec. 28. (a) The commission may by order:

(1) establish a floodway as a commission floodway; and

(2) alter, change, or revoke and terminate the commission floodway.

(b) In the order establishing the commission floodway, the commission shall fix the following:

- (1) The floodway's length at any practical distance.
  - (2) The floodway's width or the landside limits so as to include parts of the flood plains adjoining the channel that, with the channel, are reasonably required to efficiently carry and discharge the flood waters or flood flow of the river or stream.
  - (c) Notwithstanding any other provision of law, an order establishing a commission floodway is not in force until notice has been given as follows:
    - (1) In writing to the county executive in the county affected.
    - (2) By publication at least two (2) times, seven (7) days apart, as follows:
      - (A) In two (2) daily newspapers in the city of Indianapolis as provided in IC 5-3-1-6.
      - (B) In newspapers in the counties where all or part of the commission floodway is established as provided in IC 5-3-1-6.
  - (d) All of the area within a commission floodway is the floodway for all purposes of this chapter.
- As added by P.L.1-1995, SEC.21.*

#### **IC 14-28-1-29**

##### **Coordination of flood control works; approval of plans or specifications**

Sec. 29. (a) All works of any nature for flood control in Indiana that are established and constructed shall be coordinated in design, construction, and operation according to sound and accepted engineering practice so as to effect the best flood control obtainable throughout Indiana. A:

- (1) person may not construct or install any works of any nature for flood control; and
  - (2) court may not enter the final order or judgment establishing or ordering works constructed;
- unless the proposed works and the plans and specifications are approved by the commission.

(b) The interested parties must file a verified written application with the commission. The commission shall consider all the pertinent facts relating to the proposed works that will affect flood control in Indiana and shall determine whether the proposed works in the plans and specifications will:

- (1) be in aid of and acceptable as part of; or
  - (2) adversely affect and interfere with;
- flood control in Indiana.

(c) The commission shall enter an order approving or disapproving the application, plans, and specifications. If the commission disapproves the application, the order must set forth the objectionable features so that the proposed works and plans and specifications may be corrected or adjusted to obtain the approval of the commission.

*As added by P.L.1-1995, SEC.21.*

#### **IC 14-28-1-30**



**Applicability of IC 4-21.5**

Sec. 30. IC 4-21.5 applies to the commission.  
*As added by P.L.1-1995, SEC.21.*

**IC 14-28-1-31****Reports to governor**

Sec. 31. The commission shall report to the governor periodically the results of the commission's study, investigation, and experience so that any necessary additional powers and duties may be obtained to effect and obtain complete flood control and the protection and preservation of water resources.  
*As added by P.L.1-1995, SEC.21.*

**IC 14-28-1-32****Violations; Class B infractions**

Sec. 32. (a) A person who knowingly violates section 20(2), 20(3), or 29 of this chapter commits a Class B infraction.  
(b) Each day of continuing violation after conviction of the offense constitutes a separate offense.  
*As added by P.L.1-1995, SEC.21. Amended by P.L.71-2004, SEC.19.*

**IC 14-28-1-33****Violations; Class C infractions**

Sec. 33. (a) A person who knowingly fails to:  
(1) comply with the requirements of section 20(1) of this chapter; or  
(2) obtain a permit under section 22 of this chapter;  
commits a Class B infraction.  
(b) Each day a person violates section 20(1) or 22 of this chapter constitutes a separate infraction.  
*As added by P.L.1-1995, SEC.21. Amended by P.L.71-2004, SEC.20.*

**IC 14-28-1-34****Violations; penalties**

Sec. 34. A person who knowingly fails to comply with section 22(j) of this chapter commits a Class B infraction. Each day a person violates section 22(j) of this chapter constitutes a separate infraction.  
*As added by P.L.1-1995, SEC.21. Amended by P.L.180-1995, SEC.5; P.L.71-2004, SEC.21; P.L.219-2014, SEC.34.*

**IC 14-28-1-35****Injunctive relief**

Sec. 35. The commission may enjoin a violation of this chapter under IC 14-25.5-2.  
*As added by P.L.1-1995, SEC.21. Amended by P.L.71-2004, SEC.22.*

**IC 14-28-1-36****Civil penalties**

Sec. 36. In addition to other penalties prescribed by this chapter, the director may impose a civil penalty under IC 14-25.5-4.

*As added by P.L.1-1995, SEC.21. Amended by P.L.71-2004, SEC.23.*

#### **IC 14-28-1-37**

##### **Process to improve efficiency in wetland regulatory programs**

Sec. 37. The department and the department of environmental management shall, not later than January 1, 2015, develop and implement a process to improve efficiency and transparency in programs for:

- (1) water quality certifications from the department of environmental management under IC 13-13-5-1(1) and Section 401 of the federal Clean Water Act (33 U.S.C. 1341);
- (2) permits from the department of environmental management for wetland activity in a state regulated wetland under IC 13-18-22; and
- (3) permits from the director for a structure, obstruction, deposit, or excavation in a floodway under IC 14-28-1.

*As added by P.L.214-2014, SEC.2.*

#### **IC 14-28-1-38**

##### **Duties of departments in establishing process**

Sec. 38. (a) As used in this section, "permit" means any of the following:

- (1) A water quality certification from the department of environmental management under IC 13-13-5-1(1) and Section 401 of the federal Clean Water Act (33 U.S.C. 1341).
- (2) A permit from the department of environmental management for wetland activity in a state regulated wetland under IC 13-18-22.
- (3) A permit from the director for a structure, obstruction, deposit, or excavation in a floodway under IC 14-28-1.

(b) In establishing the process required under section 37 of this chapter, the department and the department of environmental management shall do the following:

- (1) Determine:
  - (A) how to inform a person who proposes to perform work for which a permit is required of the need to seek a permit for the work; and
  - (B) how to ensure that a person proposing to perform work for which a permit is required is informed of every state permit the person needs in order to do the work.

- (2) Change the:
  - (A) application forms;
  - (B) application processes; or
  - (C) application forms and application processes;used by the department and the department of environmental management for purposes of permits as necessary to ensure that a person proposing to perform work for which a permit is required is not required to provide the same information separately to the department and the department of environmental management.

(3) Determine how either the department or the department of environmental management may serve as the single point of contact, for purposes of:

(A) distributing and receiving permit applications;

(B) obtaining information needed to complete the processing of permit applications; and

(C) issuing permits;

for an applicant who does not need to have independent contact with the department that is not serving as the single point of contact.

(4) Create an internal process to ensure that the appropriate office within the department and the department of environmental management receives and timely reviews each permit application.

(5) Ensure that the processing of each permit application is monitored.

*As added by P.L.214-2014, SEC.3.*